



0000095779

HITCHCOCK & HICKS

Attorneys at Law
Post Office Box 87
Copper Queen Plaza
Bisbee, Arizona 85603-0087
(520) 432-2279

RECEIVED

2001 FEB 28 P 12:58

AZ CORP COMMISSION
DOCUMENT CONTROL

Attorney for
Sulphur Springs Valley Electric Cooperative, inc.

CHRISTOPHER HITCHCOCK
STATE BAR NO. 004523

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Commissioner - Chairman

Arizona Corporation Commission

DOCKETED

JAMES M. IRVIN
Commissioner
MARC SPITZER
Commissioner

FEB 28 2001

DOCKETED BY

IN THE MATTER OF THE NOTICE OF)
PROPOSED RULEMAKING FOR THE)
ENVIRONMENTAL PORTFOLIO STANDARD)

DOCKET NO.:
RE-00000C-00-0377

APPLICATION FOR
REHEARING AND
REQUEST FOR STAY OF
DECISION NO. 63364

Pursuant to A.R.S. § 40-253, Sulphur Springs Valley Electric cooperative, Inc. ("SSVEC"), submits this Application for Rehearing and Request for Stay of Decision No. 63364 and its attachments (the "Decision"). SSVEC has an all requirements contract with Arizona Electric Power Cooperative, Inc. ("AEPCO"), for the purchase of its power requirements.

The Decision is unlawful, unreasonable, unconstitutional, in excess of the Commission's jurisdiction, arbitrary, capricious and an abuse of the Commission's discretion for the following reasons and upon the following grounds:

1. The Decision is not supported by substantial evidence and is contrary to the evidence of record.

2. The Decision violates the Commission's Rules including A.A.C. R14-2-701 et seq., the Arizona statutes and Constitution by requiring AEPCO and SSVEC to acquire resources which

1 each does not need and which are not least cost resources.

2 3. The Decision is unconstitutional and unlawful in that it attempts to exercise
3 lawmaking, public policy and environmental planning powers which are reserved to the legislature.

4 4. The Decision impermissibly delegates to others and the Director, utilities Division
5 powers which must be exercised by the Commission, assuming arguendo it has or may exercise such
6 powers. Further, even assuming the Commission lawfully has such powers and may delegate them,
7 the delegation impermissibly contains no controlling standards.

8 5. The Solar Electric Fund provisions of the Decision violate A.R.S. §§ 40-429 and 35-
9 141 et seq. concerning the lawful receipt, use and disposition of public monies and proceeds of
10 penalties.

11 6. The Solar Electric Fund provisions of the Decision violate Arizona's Procurement Act.

12 7. The deficiency payment provisions of the Decision exceed and violate the
13 Commission's statutory penalty powers as set forth in A.R.S. § 40-421, et seq.

14 8. The Environmental Portfolio, deficiency payment and Solar Electric Fund provisions
15 of the Decision are unconstitutional in that they are in exercise of the powers of taxation and
16 appropriation which are reserved to the Legislature and further violate Article IX, § 7 of the Arizona
17 Constitution by subsidizing a particular industry.

18 9. The Commission has no power to void or abrogate private contracts as the Decision
19 purports to authorize for consistently deficient provision of solar energy. To the extent the Order
20 is requiring SSVEC to acquire power resources in violation of its all requirements contract with
21 AEPCO, such requirement is unlawful and beyond the Commission's jurisdiction.

22 10. The approval of the Environmental Portfolio Standard exceeds the Commission's
23 statutory and constitutional jurisdiction and impermissibly conflicts with and exceeds the powers
24 granted to the Commission H.B. 2663 and A.R.S. § 40-202.

25 11. The Decision does not provide for certification of the rules by the Attorney General
26 and therefore violates A.R.S. §41-1044.

1 12. The Decision is unlawful and exceeds the Commission's jurisdiction by impermissibly
2 interfering with the internal management, operations and management prerogatives of AEPCO and
3 SSVEC.

4 13. The Decision is an unconstitutional taking of AEPCO's and SSVEC's property in that
5 if forces AEPCO to incur costs and make investments without affording it adequate compensation
6 for such costs and investments.

7 14. The Decision violates Article 15 of the Arizona Constitution in that it deprives
8 AEPCO and SSVEC of a fair rate of return on the fair value of its property required by the
9 Commission to be devoted to the public use.

10 15. The Decision impermissibly authorizes rates in violation of the requirements of Article
11 15 and the case law decided thereunder.

12 16. The Decision is unlawful because the Commission improperly exercises ownership and
13 management rights over utilities.

14 17. The Decision violates the decision of the Arizona Court of Appeals in U S WEST
15 Communications, Inc. v. Arizona Corporation Comm'n,---Ariz.---, 8 P.3d 396 (App. 2000) and the
16 decision of the Maricopa County Superior Court in Cause No. 97-03748 regarding the Commission's
17 duties and obligations under Article 15 of the Arizona Constitution and A.R.S. § 41-1044.

18 WHEREFORE, having fully stated its Application for Rehearing and Request for Stay,
19 SSVEC requests that the Commission enter its Order granting this Application for Rehearing and this
20 Request for Staying Decision 63364, and the whole thereof.

1 RESPECTFULLY SUBMITTED this 26TH day of February, 2001.

2
3 HITCHCOCK & HICKS

4
5 BY 

6 CHRISTOPHER HITCHCOCK

7 P.O. Box 87

8 Bisbee, Arizona 85603

9 (520) 432-2279

10 ORIGINAL and ten (10) copies
11 of the foregoing filed this 28th
day of February, 2001, with:

12 Docket Control
13 Arizona Corporation Commission
1200 West Washington Street
14 Phoenix, Arizona 85007

15 Copies of the foregoing mailed the 28th
16 day of February, 2001, with:

17 Jane Rodda
Acting Chief Administrative Law Judge
18 Arizona Corporation Commission
400 West Congress Street, #221
19 Tucson, Arizona 85701

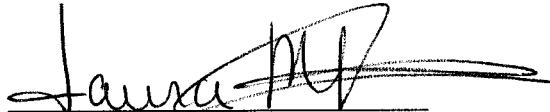
20 Thomas L. Mumaw
Jeffrey G. Guldner
21 Snell & Wilmer, LLP
One Arizona Center
22 Phoenix, Arizona 85004-0001

23 Michael Grant, Esq.
Gallagher & Kennedy, P.A.
24 2575 E. Camelback Road
Phoenix, Arizona 85016-9225
25
26

- 1 Michael Curtis, Esq.
Paul R. Michaud, Esq.
2 Martinez & Curtis, P.C.
2712 North 7TH Street
3 Phoenix, Arizona 85006-1003
- 4 Bradley S. Carroll
220 W. Sixth St., DB203
5 Tucson, Arizona 85702
- 6 Jon Wellinghoff, Esq.
2260 Baseline Road, Suite 200
7 Boulder, CO 80302
- 8 David L. Deibel, Esq.
City Attorney's Office
9 P.O. Box 26210
Tucson, Arizona 85726-7210
10
- 11 Lyn Farmer, Esq.
Chief Legal Counsel
12 Legal Division
Arizona Corporation Commission
13 1200 West Washington
Phoenix, Arizona 85007
14
- 15 Scott Wakefield, Esq.
RUCO
2828 north Central Avenue
16 Suite 1200
Phoenix, Arizona 85004
17
- 18 Karen E. Errant, Esq.
Fennemore Craig
3003 N. Central Ave., Suite 2600
19 Phoenix, Arizona 85012-2913
- 20 Douglas C. Nelson, Esq.
7000 North 16TH Street #120-307
21 Phoenix, Arizona 85020
- 22 Kenneth C. Sundlof, Jr., Esq.
Jennings Strouss & Salmon, P.L.C.
23 Two North Central Avenue
Phoenix, Arizona 85004-2393
24
- 25 Charles A. Miessner, Esq.
3030 N. Central Avenue, Suite 401
Phoenix, Arizona 85012
26

1 Russell E. Jones
2 WATERFALL ECONOMIDIS CALDWELL
3 HANSHAW & VILLAMANA, PC
4 5210 E. Williams Circle, Suite 800
5 Tucson, Arizona 85711

6 All parties listed on this docket.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

A handwritten signature in black ink, appearing to read "Laura M. Room", with a long horizontal flourish extending to the right.

Laura M. Room